lawful debts due and owing, *viz*. principal or interest, *vide* ss. 60 and 61 of the Contracts Act 1950.

On the third point - absence of demand, I thought it was a question of fact, whether there was such a prior demand. That being so it must be deposed to in the affidavit instead of having it mentioned by learned Counsel in submission. It was not so deposed to, there was consequently no opportunity to reply it by further evidence or affidavit by the opponent. The point, during submission was not pressed, otherwise I would have begun to consider whether to give time to both parties to depose further on affidavits, though with hindsight I might not have allowed them to do so for such evidence, for one thing, could have obtained with reasonable diligence.

Before concluding, I must refer to one point asserted by learned Counsel for the chargee that the new agreement in terms as alleged by Encik Mokhtar was between the chargee and Encik Mokhtar and not between the chargor and Encik Mokhtar so that presumably the chargor could not be burdened with the new agreement. I found the point to be of no substance as it was so apparent that the chargor/company was the alter ego of Encik Mokhtar who also had signed the charge instruments as director of the chargor/company. The titles to the shoplots have been at all material times registered in the name of the chargor. I found as a fact without difficulty that Encik Mokhtar was acting as an agent of the chargor/company like all directors of all other companies as agents of their companies.

In the result, I was satisfied no cause had been shown to the contrary and I made the order of sale by public auction.

DANING BIN LAJA

v.

K. K. HJ TUARAN BIN MAJID

HIGH COURT, TAWAU
TUAN IAN H.C. CHIN JC
[CIVIL SUIT NO. T. 81 OF 1983]
21 SEPTEMBER 1992

TORT: Assault and battery - Whether malicious - Damages - Compensation for reparation for wrongful act - fair and reasonable compensation - Loss of earning capacity, whether claimable - Damages for pain and suffering.

The plaintiff sued the defendant for damages for assault and battery. The defendant fired a shot at the plaintiff which caused the plaintiff impotence, incontinence of urine, paresis of the left interior extremity and shortening of the limb.

Held:

[1] On the balance of probabilities the act of the defendant was intentional and not accidental. In a claim, for assault and battery it need not be proved that the act was a malicious one.

[2] There must be satisfactory evidence of future loss of earnings and the court must be satisfied that there is a loss of earning capacity. In this case the claim for loss of earnings failed as the plaintiff's trade depended on the skill of his hands and not on his legs and body.

[3] The award for pain and suffering depends on the gravity of the plaintiff's injuries and must be in line with the present trend taking into account all the circumstances of the case.

[Judgment for the plaintiff with costs to the taxed.]

Cases referred to:

Ong Ah Long v. Dr. S. Underwood [1983] 2 MLJ 333 (cit)

Mahamad bin Mahamad Said & Anor. v. Perianayagam & Anor. [1972] 1 MLJ 67 (cit)

Ngooi Ku Siong & Anor. v. Aidi Abdullah [1985] 1 MLJ 30 / [1984] 2 CLJ 163 (cit)

Seah Yit Chen (f) v. Singapore Bus Service [1978] Ltd & 2 Ors. [1990] 2 CLJ 901 (cit)

Raja Mohktar v. Public Trustee [1970] 2 MLJ 151 (refd)

Wong Yee Pen v. Sharifudin Bin Yusof [1989] 2 CLJ 1098 (refd)

Other source referred to:

Halsbury's Laws of England, 4th Edn., paras 1310 & 1311

For the plaintiff - Douglas Primus, Esq; M/s. Lee & Thong
For the defendant - Ting E. Hang, Esq; M/s. Ting & Co.

JUDGMENT

Ian H.C. Chin JC:

I. LIABILITY

A. The plaintiff's claim.

The plaintiff Daning Bin Laja sues the defendant K.K. Hj Tuaran Bin Majid for damages for having on 20 August 1980 "intentionally and maliciously without lawful excuse fired a shot" at him and caused him severe and grievous injuries.

B. Evidence for plaintiff.

The plaintiff (PW5), who is now 29 years old, testified that he came to Sabah in 1976. That it was on 20 August 1980 at about 5.30 p.m. that he wanted to go from Sekolah Menengah Kerajaan Agasi, Lahad Datu, to a sawmill. After failing to flag an empty taxi he stopped and got on the open part of a vehicle known as a pickup which had two other passengers. The pickup then proceeded towards the police complex. He was loosening his belt while standing up when he heard the sound of bullets being loaded into a gun and then saw the defendant pointing a shotgun at him. He was so shocked at the sight of the gun being pointed at him that he fell from the pickup onto the road while the pickup was moving. The pickup proceeded with its journey after he fell but later turned around and headed towards him. He was frightened and ran but the pickup overtook him. He saw the defendant who was holding the shotgun, jump from the pickup and then point the shotgun at him. He turned and ran after which he heard the sound of a gunshot. He felt his buttock being hit and he assumed it was a gun shot. He was thrown to the ground and became unconscious. It was in a hospital that he next regained consciousness. During cross-examination the plaintiff did not agree that the discharge of the gun was a result of an accident, that is he did not agree that the defendant fell when the pickup moved resulting in the discharge of the gun. When re-examined the plaintiff stated that he was 65 feet from the defendant when the defendant was chasing him and pointing the gun in his direction.

One Roskan Bin Juman @ Roskan bin Jeman (PW1), who was at the relevant time a policeman, testified that on 20 August 1980 at about 5.40 p.m., while in a taxi driven by a person called Bhogo, he saw the defendant jump from the back of a stationary pickup and fire a shot. The pickup was about one chain from the moving taxi. According to PW1, the defendant when jumping from the pickup was holding a shotgun aloft but he afterwards pointed the shotgun in a certain direction at which moment he (PW1) shouted "don't" ('jangan") at the defendant but he nevertheless heard the sound of a gunshot. He got down from the taxi and saw a person lying on the road. He then approached the defendant and took the shotgun from him and the defendant was alleged to have uttered the following words - "Inilah macam jagung di-bakar letupan" - (translated to mean -"it is like the explosion of a roasting corn"). He seized the gun from the defendant after which two persons, one called Hj Mumin (PW2), and the other Khairuddin, came. He took the defendant and the shotgun to the police station. He alleged that he saw the person being shot in the buttock and that the man was bleeding and unconscious. At that time the weather was fine, he could see clearly and there was not much traffic. It was put to him during his cross-examination that he was not there when the shotgun was discharged but that he came later on which he denied. He also maintained during cross-examination that he seized the shotgun from the defendant.

The second witness for the plaintiff was also a policeman. He is Haji Mumin Bin Haji Omar (PW2). He testified that it was on the said date and time that he and one Kairuddin were on their way home from Lahad Datu town to the new police complex at Jalan Kastam with him driving a car that he saw a body lying at the junction of Tengah Nipah road. He then parked his car on the left side of the road and walked towards the body which bore signs of injuries. He testified he saw the defendant, PW1 and a RELA (Angkatan Sukarela Rakyat) officer Adidil Muluk (hereinafter called "the driver"). He further testified that he was instructed by Inspector Khairuddin to inform the OCPD of the discovery of the body. He said he saw Roskan holding a shotgun and that Tuan Haji Tuaran spoke to him and said - "Dialah yang merompak di Kampung Sepagaya semalam" - (translated to mean "he was the man who

robbed last night at Kampung Sepagaya"). He testified that the defendant was at that time very angry. There was a pickup at the scene of the incident. Under cross-examination, this witness maintained that it was PW1 and not the defendant who carried the shotgun to the police station.

C. The Defence.

The defendant in his defence stated that he was attempting to alight from a vehicle, fell and caused the gun to discharge accidentally. The other defence is that he was exercising a lawful right to shoot the plaintiff who was escaping from lawful custody or apprehension.

D. Evidence for Defence.

The defendant (DW3) gave evidence and denied that he intentionally shot the plaintiff. On the day in question the plaintiff had got on the pickup and it was when the pickup signalled to turn into the police complex, that the plaintiff asked him - "PERGI MANA INI KERETA?" to which he replied that he was sending the person in the cabin to the police station. The plaintiff upon hearing that jumped from the pickup. He then shouted at him as to why he was running away. The plaintiff shook his hand and said he did not want to go to the police station. He then informed the driver that the plaintiff had jumped and run from the pickup. The driver then chased after the person by turning the pickup around. The driver while driving with one hand was attempting with the other hand to catch hold of the plaintiff while the pickup was moving and while the plaintiff was running. The plaintiff evaded the driver. The defendant further testified that he was standing up and talking to the plaintiff and asking him not to run away as the police will not arrest anyone who has not done anything wrong. The plaintiff shook his hand again and repeated that he did not want to go to the police station. The plaintiff made a turn to avoid the pickup and the pickup also made a turn to catch up with the plaintiff. It was at this moment that he, holding the shotgun fell from the pickup. As he was falling from the pickup, the shotgun was discharged accidentally. When he saw a group of people about 2 chains away at the roundabout he became curious and proceeded to the place where the people were gathered. He saw the plaintiff lying on the ground and he asked the driver to send the plaintiff to the hospital. Afterwards PW1 came and wanted to seize his shotgun but he refused to give him the shotgun because he did not know he was a policeman. Still later PW2 came in a car and asked him to get into the car to go to the police station. He went to the police station where he handed his shotgun to someone in the police station. He denied saying the words which PW1 alleged he said. He stated that it is not true that he held the gun aloft, jumped from the pickup or pointed the gun deliberately in any direction. He also denied the alleged conversation with PW2. He does not agree that the shotgun cannot be discharged if the safety catch is on because his friends had told him that their guns went off even though the safety catch was in place. He did not know that someone had been shot by his gun. He was told by someone that a person had been shot.

One Talib Bin Hassan (DW1) gave evidence for the defence. It was on 20 August 1980 that he, the defendant, his stepson Atin Pandailam @ Masmad Bin Pantaialam (DW2) and the driver were on their way to deliver to the police a person they apprehended in Kampung Sepagaya that the pickup was stopped by the plaintiff. DW2 was seated in front with the said person sandwiched in between him and the driver. He and the defendant were at the open part of the pickup. As the pickup approached the police station the plaintiff waved the pickup to stop and the plaintiff got on the back. When the pickup was turning into the police complex, the plaintiff asked him and the defendant as to where they were heading. The defendant replied saying that he was taking the person seated in the cabin of the pickup to the police station. He also said they were going to the police. The person then said he did not want to go to the police station. The plaintiff thereafter jumped from the pickup. The defendant then spoke to the driver to inform him that the plaintiff had jumped. The driver then turned the pickup around to give chase. The plaintiff was running away very fast when the pickup gave chase. When the plaintiff turned back, the pickup also turned back. As the pickup was turning back, it stopped suddenly and his head bumped against the cabin of the pickup. He then heard a gun being fired. He turned and saw the defendant on the ground massaging one leg while he was sitting on the ground. He thought the defendant was shot and asked whether he was. The defendant told

him he fell from the pickup. He saw a group of people some distance from him. He saw the defendant go over to see a body lying on the ground. He heard the defendant giving instructions to the driver to send the person on the ground to the hospital. Before this could be done, PW1 came and wanted to seize a shotgun from the defendant. The defendant refused but said he would take the shotgun to the police himself. He, the driver and his son sent the plaintiff to the hospital. He stated that it is not true that the defendant chased after the plaintiff and shot him. Under cross-examination he confirmed that the defendant who sat on the floor of the pickup with his legs stretched, had the shotgun placed on top of his legs and pointing to the back of the pickup. He does not know how the gun was discharged and he did not see the defendant fall.

The next witness for the defence was Atin Pandailam @ Masmad Bin Pantaialam (DW2) who was seated in the cabin of the pickup. He testified that as the pickup neared the police station the plaintiff got on the pickup but as the pickup was entering the police complex, someone shouted - "ORANG ITU SUDAH LARI" - after which he turned and saw the plaintiff running away and the pickup gave chase. It was while chasing the plaintiff that he heard a gun shot thereafter which the pickup came to a stop. He came down from the pickup and saw the plaintiff and carried him to the pickup and sent him to the hospital. He did not see the defendant jump from the pickup or chase after the man to shoot him.

E. The Law.

The plaintiff's claim is based on the tort of assault and battery which are defined in Halsbury's Law of England, 4th Edn., paras 1310 and 1311 as follows:

> 1310. Assault is an intentional offer of force or violence to the person of another...
>
> 1311. A battery is an act of the defendant which directly and either intentionally or negligently causes some physical contact with the person of the plaintiff without the plaintiff's consent. The term "assault" is commonly used to include battery.

F. The Issue.

The first issue is simply whether the shooting of the plaintiff by the defendant was intentional or accidental. It is not disputed that it was the defendant's shotgun that had gone off resulting in the plaintiff being shot. The defence of exercising the right of apprehension in preventing the plaintiff from escaping from lawful custody appears to have been abandoned and if it is not it is completely untenable for the reason that there is absolutely no ground for believing that the plaintiff had at the relevant time committed an offence which justifies the plaintiff being shot when allegedly trying to run away.

G. Findings of Court.

The evidence of PW1, if believed, would on a balance of probability establish the plaintiff's claim that the defendant intentionally fired a shotgun at him and had thereby committed the tort of assault and battery. PW1 had shouted at the defendant not to fire the shotgun and this came immediately after the pickup carrying the defendant and others had given chase to the plaintiff. It is not disputed that the defendant together with others were attempting to apprehend the plaintiff who was running away, after the plaintiff, in the opinion of the court, jumped (rather than fell) from the pickup. PW1 had testified that the defendant took deliberate aim with his shotgun and that thereafter a gun shot was heard despite shouting to the defendant not to discharge his shotgun. The only person at that time who was hit with a gunshot was the plaintiff. I am of the conclusion that it was the shot from the defendant's gun that hit the plaintiff.

It has been submitted by counsel for the defendant that PW1 should not be believed for the following reasons -

(1) it was highly improbable that he (PW1) could from inside a moving taxi see the defendant do what he alleged; and
(2) if he did see, he should have also seen the plaintiff being chased by a pickup and should have seen the plaintiff running.

It has not been explained by Counsel for the defendant why PW1 could not from 1 chain away see the defendant jumping from the pickup carrying a shotgun and firing the same. Also not explained was why PW1 must have at the same time seen the plaintiff being chased and running. The distance between the place where the defendant had discharged his shotgun and the place where the plaintiff had fallen after being shot was according to the defen-

dant about 2 chains. If PW1 had not seen, though there is no direct evidence to suggest he had not seen, the plaintiff being chased or running away it is because the plaintiff was 2 chains away from the defendant and therefore out of PW1's focus since PW1's attention was focussed on the defendant and the shotgun the defendant was carrying.

The court has observed that PW1, a dis-interested party, was at no time hesitant about his evidence. He was a witness of truth and the court can find no reason to disbelieve PW1. Having reached that conclusion, the court finds that the plaintiff has proved his claim on a balance of probability. Though it is claimed in the statement of claim that the defendant did the act maliciously and though this has not been proved, the court finds that it does not matter as it is not a requirement for the tort of assault and battery that the act complained of should be malicious.

The court had before it reached the conclusion aforesaid considered the defendant's testimony that the shotgun was discharged accidentally when he fell from the pickup. Since it was not denied that it was the bullet from the defendant's shotgun that hit the plaintiff, the onus is on the defendant to establish that the discharge of the gun was accidental. This the defendant had failed to do. The defendant, by his own evidence, was chasing the plaintiff when the plaintiff was shot. The defendant was trying to prevent the plaintiff from fleeing and this he did by shooting the plaintiff. The defendant had stated in cross-examination that the gun was not loaded when he left the house but he did not explain to the court how if the gun was not loaded a shot came to be fired. This can only happen if the gun was loaded by the defendant after he left the house. All this appears to fit in with the evidence of PW1 that the defendant had in fact deliberately shot the plaintiff. The defendant has not explained and no evidence was produced to explain how a gun can be discharged when the fingers were not at the trigger and the hand was only holding the barrel of the gun. None of the witnesses called by the defendant gave any testimony to support the defendants' story of his fall from the pickup and the accidental discharge of the gun. The defendant had therefore failed to establish on a balance of probability that the shotgun was discharged accidentally. The court has next to consider the question of damages.

II. QUANTUM OF DAMAGES

A. Evidence of Damages.

With regards to matters connected with damages the plaintiff testified that he was a carpenter since he was 13 years old. Immediately before he was shot he, then aged 23, worked as a carpenter for Lajan, a foreman, who paid him RM15 per day. He testified that he was without a job for 5 years after his discharge from the Lahad Datu hospital in 1980 but he is now making RM500 per month as a manufacturer of furniture. He cannot have sex now and cannot have a family. He cannot carry heavy objects and cannot stand or sit for long without feeling pain. He cannot control the flow of urine. He cannot now play basketball and volley ball.

Under cross-examination he admitted he has no documents to support his claim that he earned RM15 per day but he does not agree that at most he earned only RM6 per day as only the head carpenter earned RM15 per day. He maintained that he had a work-pass which was endorsed on a travel document which the police had kept since the shooting incident. On re-examination he said the work-pass was issued by the District Office of Semporna.

The plaintiff also called a surgeon named Madhugupal Kulkarni (PW6) who said that on 25 August 1980 a person with multiple gun shot injury was brought to the Queen Elizabeth Hospital for further treatment. The injuries suffered by the person involved:

(1) the urinary bladder;
(2) the rectum;
(3) rupture of left thigh bone (femur);
(4) injury to a long nerve called sciatic nerve which goes down the left thigh and the leg; and
(5) bleeding from the rectum and passing of faeces from the uretha.

The person was unable to move his left side because of pain and broken bone. Colostomy was performed on 8 September 1980 by him which involved short-circuiting the large intestine to divert the flow of faeces from the urinary bladder and another operation to close this opening was done on 29 October 1980. As for the broken bone, immobilization was done to the left femur. The person was quite ill because of

(1) blood loss due to multiple gun shot injury and
(2) infection on account of injury to the passage between the bladder and the rectum with faecal contamination.

The person was given two pints of blood in a blood transfusion in the Queen Elizabeth Hospital and was given anti-biotics before operation. There were 9 entry and exit wounds on the person. An X-ray and operation showed 3 pellets were lodged in the body. One pellet is lodged in the fracture site of the left femur, another one is lodged at the place under the two pelvic bones joint and the third pellet is in the pelvic cavity. All the 3 pellets were not removed because attempts to remove them could result in more injury. The sciatic nerve damage results in partial loss of function in the left leg and thigh. The patient was initially seen by another doctor who performed the first operation. When the person was referred to him, it appeared from the body of the person that a laporotomy was already performed. He was discharged two to three weeks after he was admitted but was re-admitted for closure of the colostomy. When the person was discharged, he was walking with a pair of crutches. He was able to pass his motion normally. On 24 October 1991 he re-examined the person and made a report of the examination (exhibit "P2"). The report, in summary, states the plaintiff has disabling residual consequences in the form of impotence, incontinence of urine, paresis of left inferior extremity and shortening of the limb. He now walks with a limp.

B. Principles of Law.

The defendant's Counsel had cited some very useful authorities from which I am going to reproduce some passages, *viz*:

> It has to be borne in mind that damages for personal injuries are not punitive and still less a reward. They are simply compensation that will give the injured party reparation for the wrongful act and for all the natural and direct consequences of the wrongful act, so far as money can compensate. (*Ong Ah Long v. Dr. S. Underwood* [1983] 2 MLJ, at p. 334)

> It seems to us that the two cases relied on by the learned judge are authority for the proposition that an award should not be out of line with a discrenible trend or pattern of awards in reasonably comparable cases...

With respect we do not think that the learned judge should have taken compensation for each of the two injuries suffered by the plaintiff separately and then just added them up at the end. The items are not separate heads of compensation. They are only aids at arriving at a fair and reasonable compensation. See *Fletcher v. Autocar and Transporters Ltd*. There is an element of overlapping when two or more injuries are suffered simultaneously. (*Mahamad Bin Mahamad Said & Anor. v. Perianayagam & Anor.* [1972] 1 MLJ 67, at p. 68)

> ...the general principle is that an injured plaintiff is entitled to damages for the loss of earnings and profits which he has suffered by reason of his injuries up to the date of the trial and for the loss of the prospective earnings and profits which he is likely to be deprived in the future. There must be evidence on which the court can find that the plaintiff will suffer future loss of earnings, it cannot act on mere speculation. If there is no satisfactory evidence of future loss of earnings but the court is satisfied that the plaintiff has suffered a loss his loss of earning capacity as part of the general damages for disability and not as compensation for future loss of earnings (*Ashcroft v. Curtin* (*supra*) and *Rasidin bin Partorjo v. Frederick Kiai*)... (*Ong Ah Long v. Dr. S. Underwood* [1983] 2 MLJ 324, at p. 333)

C. Plaintiff's & Defendant's Contentions & Court' Findings.

The claims of the plaintiff can be summarized as follows:

I. Special Damages

(a)	Damage to shirt & trousers	RM 70
(b)	Loss of Pre-trial earnings & Interest (20 August 1980 to 13 April 1992)	RM 1,065 RM 496

II. General Damages

(1)	Future Pecuniary Loss	
(a)	Loss of Earning Capacity	RM 57,600
(2)	Non-Pecuniary Loss	
(a)	Injuries (including pain and suffering and loss of amenities):	
(i)	Abdominal injuries	RM100,000
(ii)	Leg injuries	RM 55,000
(iii)	Scars	RM 28,000
(b)	Loss of expectation of life	RM 6,500
		RM248,731

(1) In answer to the defendant's submission, the plaintiff replied that the lack of documentary evidence to support the wages the plaintiff had earned before the shooting should be excused on account of their being lost. That in any event the court should take judicial notice of how much a carpenter could earn. It is a notorious fact that there is a large influx of illegals, like the plaintiff, and there are always ready employers of such "illegals" and that their wages are cheap. This fact I can take judicial notice of. The court, without documentary evidence, cannot agree with plaintiff's Counsel that the plaintiff earned RM15 a day. The cheap labour which I was referring only commanded about RM8 per day. This amount I award the plaintiff for 63 days instead of the 71 days claimed as 8 days have to be deducted for Sundays on which no employer would normally engage a worker because of the double-pay which the law ordains for working on holidays. The lost pre-trial earning is therefore RM504. I do not think I should waste time on a discourse as to whether the clothings on the plaintiff which obviously must be riddled with pellet holes was worth RM70 or not and I would allow the amount. The amount for special damage is therefore (RM504 plus RM70 = RM574 with interest thereon at 4% per annum from 20 August 1980 to 21 September 1992 (12 years 1 month) of RM277.42) a sum of RM851.42.

(2) The plaintiff contends that though he is now earning more than what he earned before the shooting he should nevertheless be awarded RM57,600 for loss of earning capacity because he could well earn more than RM1,000 because he could undertake to get more orders if not for his impaired physical condition. The defendant replied that the test is -

> is there substantial or real risk that he will some time at the end of his working life lose his job or get a less paid employment because of the effect of the injuries sustained

and cited *Ngooi Ku Siong & Anor. v. Aidi Abdullah* [1985] 1 MLJ 30. What one carpenter can produce is very limited and no evidence had been led as to how and to what extent the plaintiff's productivity was reduced on account of his injuries. The plaintiff by his own admission was already earning more at the time of the trial than he was doing at the time of the injuries. His trade depends on the skill of his hands, which are not injured, rather than his legs or body. I therefore rule that the claim for loss of earning capacity should fail.

(3) As for the injuries (inclusive of pain and suffering and loss of amenities) the defendant contended that it is not legitimate to assess the injuries separately and then total the award citing *Ngooi Ku Siong's* Case, *supra*, in support. The plaintiff had no quarrel with that principle of law but added that a global or component or composite approach could be adopted and cited *Seah Yit Chen (f) v. Singapore Bus Service [1978] Ltd. & 2 Ors.* [1990] 2 CLJ 901, at p. 903 per Yong Pung How J., which reads:

> In my opinion, which approach is to be followed in each case must necessarily depend on the facts of the case, bearing in mind the need to avoid overlapping. When the injuries sustained are related to the same part or function of the body, there should only be one award of damages. Without any risk of overlapping; where the injuries sustained are to different parts of the body and affect different functions, as in the instant case where the plaintiff has sustained injuries to the knee and to the spine, it would be appropriate to make a separate award for each head of damage. In such cases, however, care would still have to be taken to avoid a further "sub-itemising" of a head of damage or injury.

All the injuries came from a buckshot which exploded with multiple pellets. The entry points for the pellets were the various parts of the buttock of the plaintiff. The pellets then damaged the bladder, the rectum, the thigh bone and a sciatic nerve of the left thigh and left leg. Colostomy and laporotomy were performed resulting in surgical scars. The pellets also created scars. I agree with the plaintiff's Counsel only in respect of two separate heads, which are the abdominal injuries and leg injuries. I cannot agree that there should be a separate head for scars because these are related to the abdominal injuries. I also do not agree that there should be a separate head for loss of expectation of life as this would overlap the loss of amenities award. Having said that I will now proceed to assess the amount of award appropriate for the present case referring to decided cases for the purpose of guide.

Even where there is complete paralysis of the lower half of the body and of ordinary bowel, bladder and sexual functions the court in the

case of *Raja Mohktar v. Public Trustee* [1970] 2 MLJ 151 only awarded a sum of RM80,000 for loss of amenities and pain and suffering. It cannot be argued that the present case is any where near the seriousness of injury of that case. I cannot accept the figure of RM100,000 as it is too far out of line with the present trend. But then again the injuries of the plaintiff must have caused considerable pain and suffering and though not as serious as the said case it is still serious. I would therefore award a sum of RM60,000 for the abdominal injuries. As regards the head of the leg injury I would accept the case of *Wong Yee Pen v. Sharifudin Bin Yusof* [1989] 2 CLJ 1098 cited by plaintiff's Counsel as providing a valuable guide for the amount to be awarded and I would therefore award the sum of RM30,000. The said sum of RM90,000 (RM60,000 + RM30,000) shall carry interest at 8% per annum from 13 August 1983 (date of service of writ) to 21 September 1992 (date of judgment) (9 years and 40 days) of RM65,589.04.

The Award

I would therefore allow judgment for the plaintiffs in the following sums:

(a) Special damage	RM	574.00
(i) Interest	RM	277.42
(b) General Damages:		
(i) Abdominal injuries	RM	60,000.00
(ii) Leg injuries	RM	30,000.00
(iii) Interest	RM	65,589.04
Total	RM	156,440.46

The sum of RM90,574 (RM574 + RM60,000 + RM30,000) shall carry further interest at 8% per annum from the date of judgment until payment. The plaintiff shall also recover costs from the defendant to be taxed.

IN THE MATTER OF RE K. & M. (JOINT PETITIONERS)

HIGH COURT, SHAH ALAM
DATO' MAHADEV SHANKAR J.
[JOINT DIVORCE PETITION FOR NULLITY NO. 33-260-91]
3 JULY 1992

FAMILY LAW: Petition for nullity - Non-consummation - Principles applicable - Proof required - Law Reform (Marriage & Divorce) Act 1975.

The petitioners, both of the Hindu faith, were married in March 1989 at the Registry of Marriages in Petaling Jaya after due compliance with the provisions of ss. 22(3), (6) and 23 of the Law Reform (Marriage & Divorce) Act 1975. The petitioners asserted that at the time of the civil marriage it was their intention not to cohabit until after a further ceremony had taken place according to Hindu religious rites.

The ceremony never took place and a joint petition was presented in October 1991 seeking the annulment of the marriage on the ground that it was never consummated.

Held:

[**1**] The law relating to marriages was not intended to provide for conditional marriages which are a nullity by way of being void *ab initio* or being voidable because there was in reality no consent to consummation when the marriage was solemnised.

[**2**] A person who says he or she has come to the Registrar on his own free will for the purpose of becoming man and wife, can only do so if there are no reservations.

[**3**] Swearing a statutory declaration knowing that it is not factually correct or making a false statement to the Registrar could come within s. 199 of the Penal Code.

[**4**] The Court may require more than the parties' bare assertion that consummation had not taken place. A reluctance to provide medical evidence may lead to adverse inferences.

[Leave to withdraw petition granted. Order accordingly]

Legislation referred to:
Law Reform (Marriage & Divorce) Act 1975, ss. 22(3), 22(6) & 23
Penal Code, s. 199

For the petitioners - Santha ; M/s. Seelan & Santha